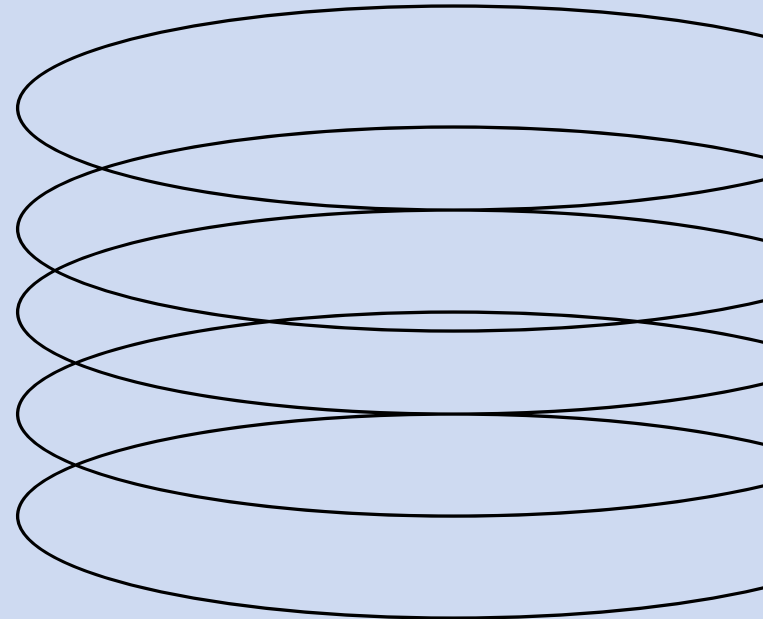
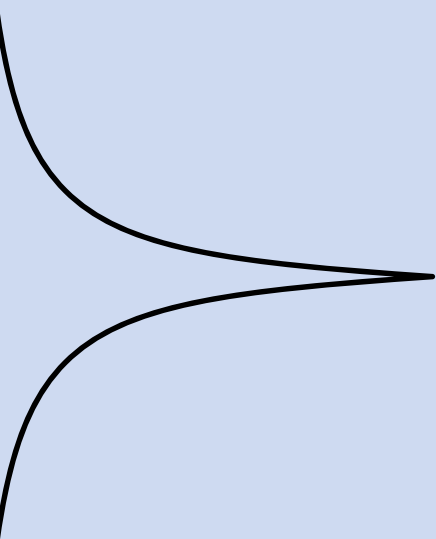


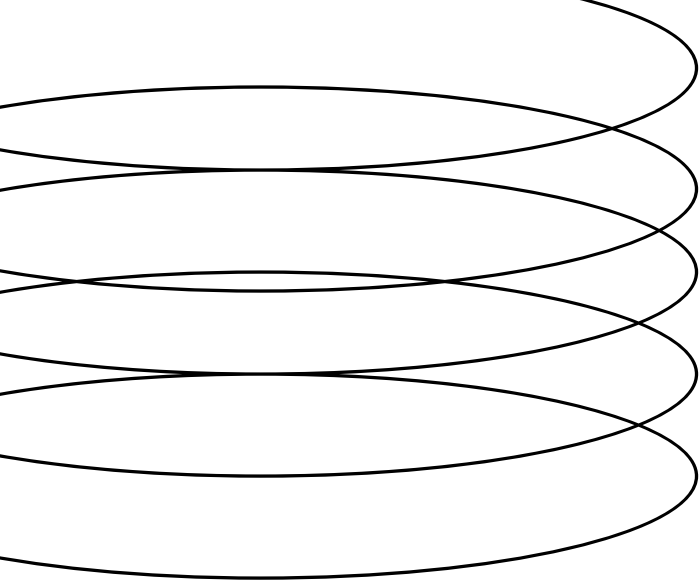
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**(MISS)USE OF MODERN
TECHNOLOGY AND ITS
CONSEQUENCES ON HUMAN
RIGHTS OF REFUGEES, ASYLUM
SEEKERS AND MIGRANTS AT
WESTERN-BALKAN AND
EXTERNAL EU BORDERS**



NAME OF PUBLICATION

(Miss)Use of Modern Technology and its Consequences on Human Rights of Refugees, Asylum Seekers and Migrants at Western-Balkan and External EU Borders

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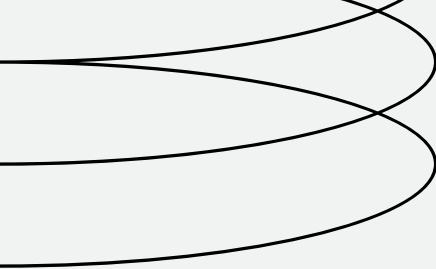
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I Introduction





Right to access territory and asylum procedure is *conditio sine qua non* for the effective enjoyment of the right to international protection for people who were forced to flee their countries of origin due to persecution or situation of general insecurity and widespread violence. Also, migrants, and especially those who are vulnerable (health issues, elderly, victims of trafficking in human beings, children, etc.) must also be allowed unhindered access to territory and access to other residential procedures so their vulnerabilities can be properly addressed and needs assessed.

The geographical position of the Republic of Serbia,[1] which lies in the heart of the so called Western-Balkan Route,[2] has led to the situation in which, since 2015, at least 1,5 million or refugees, asylum seekers and migrants have transited towards EU countries. What is important to mention is that this number is most likely significantly higher. The reason for this statement lies in the fact that there are many foreign nationals who were not registered in line with the Asylum and Temporary Protection[3] or Foreigners Act[4] or who simply passed through Serbia without being noticed by relevant State authorities.

What is also important to outline is the fact that, since March 2016 and the agreement between the European Union and Turkey, the so-called EU-Turkey Statement[5], the flexible approach of border authorities has sharply shifted towards restrictive policies which are usually not in line with the International Human Rights Law[6] and International Refugee Law.[7] The border policies started to imply a kind of cluster of human rights violations which revolves around the colloquial expression ‘pushbacks’, which is basically one of the forms of collective expulsions prohibited by the Article 4 of Protocol 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.[8] This practice basically undermined the dignity of the people on the move originating mainly from Africa, Middle East and other parts of Asia and is consisted of numerous other types of human rights violations.

[1] Hereinafter: Serbia.

[2] Hereinafter: WBR.

[3] Official Gazette no. 24/2018.

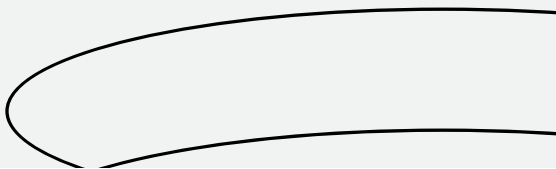
[4] Official Gazette no. 24/2018 and 31/2019.

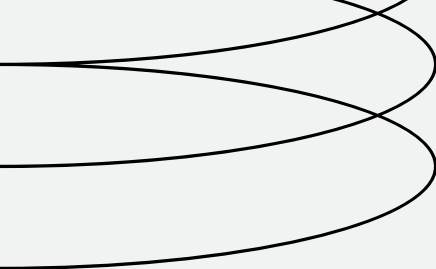
[5] European Union: *Council of the European Union, EU-Turkey statement, 18 March 2016*, 18 March 2016, available at: <https://bit.ly/3ubqIbd>.

[6] Hereinafter: IHRL.

[7] Hereinafter: IRL.

[8] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <https://bit.ly/3oUqWkC>, hereinafter: ECHR.





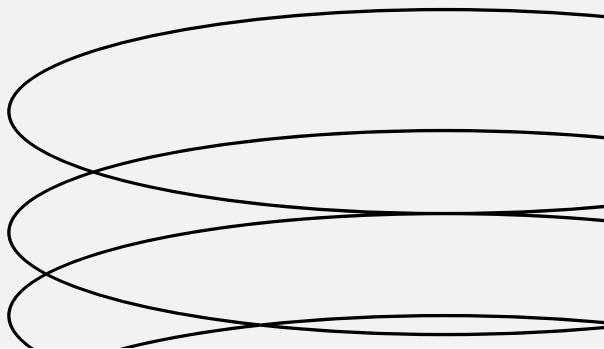
For instance, one pushback of a group of refugees and migrants usually implies short term deprivation of liberty, ill-treatment in form of deliberate infliction of physical and mental pain and suffering, expulsion without risk assessment of refoulement and at the same time (group) expulsion without consideration of individual circumstances. In other words, right to liberty and security, prohibition of ill-treatment, but also denial of justice for violation experienced are de facto abolished by harmful border practices.

Even though there were many instances in the past in which this kind of harmful border practices have been applied at refugees and migrants arriving to Europe, 16 March of 2016 marked the start of the period in which unlawful behaviour of border authorities has become a rule, and not a set of isolated or occasional incidents. It can be safely said that European borders have become places of the twilight of the rule of law and respect, protection and fulfilment of human rights of people on the move.

The Publication which is in front of you has an aim to make a link between increasing securitization of European borders, regardless of them being borders of European Union^[9] Member States or non-EU States, with the special emphasize on Serbia which, as outlined before, lies in the heart of the WBR, being surrounded with countries which form the so-called external borders of the EU. The securitization of borders is the notion which in this particular case is not solely related to the number of border guards or military dispatched at different borders or the barb-wire and other types of fences and obstacles which are spanning between different countries, but also modern technologies which can assist border authorities to track down irregular movement from one country to another. The authors of this analysis will strive to depict how, for instance, drones or thermo-vision cameras, can at the same time save lives of people irregularly crossing European borders, but also facilitate the above-described harmful border practices. It will also provide a reflection on the funds provided to the Republic of Serbia by the European Union and will try to disclose policies hidden behind the narratives such as ‘combating illegal migration’ or ‘combating smuggling’.

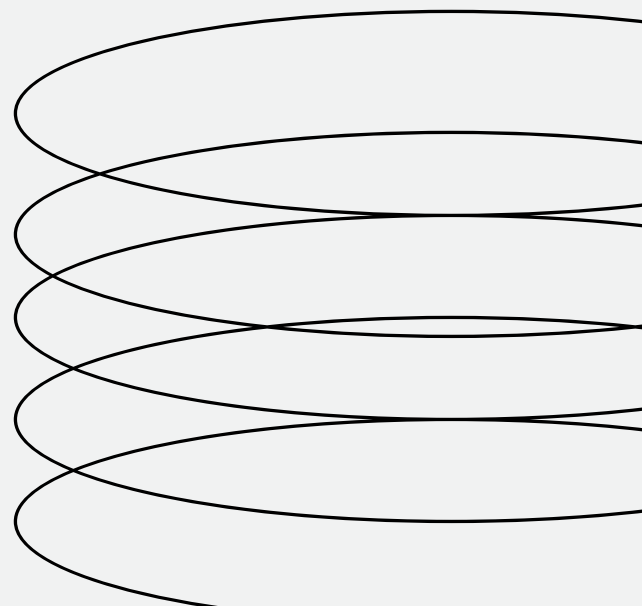
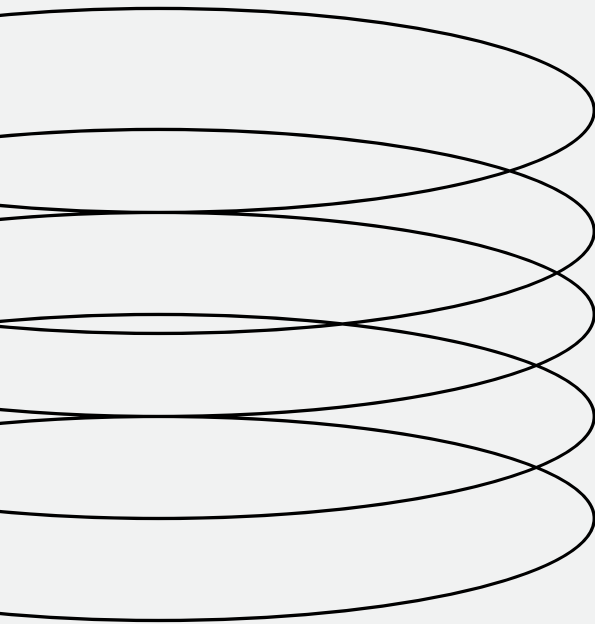
The Publication is consisted of four chapters. Apart from this Introduction, the second Chapter briefly outlines the most important aspects of different human rights which are put at stake through harmful border practices. These practices have been gradually intensifying through extensive use of harsh border policies, including through resorting to modern technologies such as drones, thermal cameras and sensor movements.

[9] Hereinafter: EU.



The third Chapter will briefly outline relevant legal framework which governs lawful forcible removals of foreign nationals from one country to another, but will in more details deal with the evolution of the use of modern technologies by Serbian and other neighbouring countries' since 2016. This Chapter will strive to make a link between the increased number of pushbacks with the increased usage of modern technologies at borders. The final Chapter will offer the set of conclusions and recommendations.


This Publication was drafted by Nikola Kovačević, Lazar Vasović and Anđela Šemić from the Center for Research and Social Development IDEAS, under the auspices of the project Technology and Human Rights of Refugees and Migrants at Borders funded by Internews.





II International Standards





Even though IHRL standards relevant for this Publication are sufficiently developed in the practice of the European Court of Human Rights,[10] the guardian of the ECHR, we will briefly outline just some of the relevant EU standards relevant for the border control, being at the same time aware that the current ongoing process of reform of the Common European Asylum System[11], will introduce more harmful novelties. When saying harmful, it means that the component of asylum externalization and increase of border procedures, will most likely lead to even more intensified practice of denial of access to territory and asylum system embodied mainly true pushbacks, but also extensive use of immigration detention.[12]

II.1. European Union Standards

The Charter of Fundamental Rights of the European Union[13] ill-treatment[14] in absolute sense and explicitly envisages the right to asylum[15] and prohibition of collective expulsion alongside the principle of non-refoulement.[16] It further provides the right to an effective legal remedy as well as the right to receive legal aid, legal advice and legal representation as a mean to have an effective access to justice.[17]

[10] Hereinafter: ECtHR.

[11] Hereinafter: CEAS.

[12] See more at: ECRE, *What was agreed? What are the consequences? Where are we now?*, 9 June 2023, available at: <https://bit.ly/3OuJ3gy>.


[13] European Union, *Charter of Fundamental Rights of the European Union*, 26 October 2012, 2012/C 326/02, available at: <https://bit.ly/37ptYa3>.

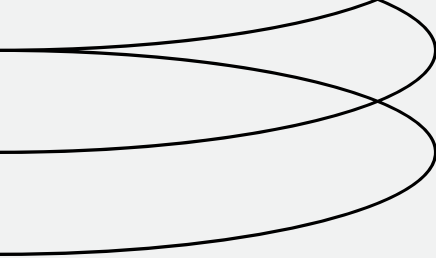
[14] *Ibid.*, Article 4.

[15] *Ibid.*, Article 18.

[16] *Ibid.*, Article 19.

[17] *Ibid.*, Article 47.





Treaty of the European Union[18] in its general provisions regarding the area of freedom, security and justice stipulates:

‘The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States. It [...] shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals [...]’[19]

The EU treaty further provides that the Union shall develop a policy with a view to:
[...]

‘(b) carrying out checks on persons and efficient monitoring of the crossing of external borders

(c) the gradual introduction of an integrated management system for external borders.’[20]

Additionally, European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures concerning:

‘[...] (b) the checks to which persons crossing external borders are subject.

[...] (d) any measure necessary for the gradual establishment of an integrated management system for external borders.’

Article 78 (21) of the EU Treaty envisages that the EU ‘shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement and in line with the Convention Relating to the Status of Refugees[22] and the 1967 Protocol.[5] Article 79 further stipulates that the EU shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the

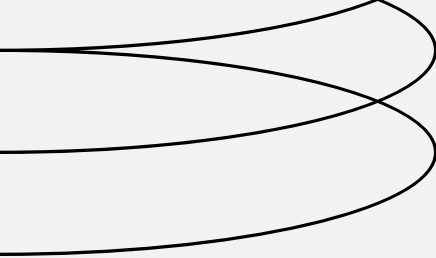
[18] EU, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01, available at: <https://bit.ly/3ar13G4>, hereinafter: EU Treaty.

[19] *Ibid.*, Article 67.

[20] *Ibid.*, Article 77 (1).

[21] UNGA, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: <https://bit.ly/2GCMu4R>

[22] UNGA, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: <https://bit.ly/3kbPLpf>.



prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings. This will be done through the adoption of measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification [...]

(c) illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation.[23]

The Schengen Borders Code[24] stipulates that border control is in the interest not only of the Member State at whose external borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal immigration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations.[25] Border checks should be carried out in such a way as to fully respect human dignity. Border control should be carried out in a professional and respectful manner and be proportionate to the objectives pursued.[26]

The Schengen Border Code further provides that:

‘Border guards shall, in the performance of their duties, fully respect human dignity. Any measures taken in the performance of their duties shall be proportionate to the objectives pursued by such measures.

While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.’[27]

‘Cross-border movement at external borders shall be subject to checks by border guards [...]

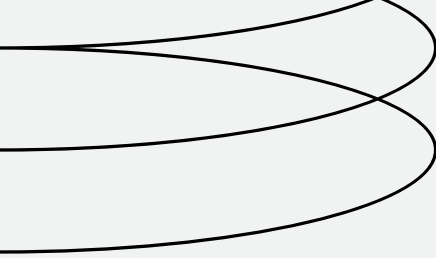
[23] EU Treaty, Article 79.

[24] EU: Council of the European Union, *Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders*, 15 March 2006, OJ L. 105/1-105/32; 13.4.2006, (EC) No 562/2006, available at: <https://bit.ly/3drTv6E>, hereinafter: Schengen Borders Code.

[25] *Ibid.*, Point 6.

[26] *Ibid.*, Point 7.

[27] *Ibid.*, Article 6 (1) and (2).



All persons shall undergo a minimum check in order to establish their identities on the basis of the production or presentation of their travel documents. Such a minimum check shall consist of a rapid and straightforward verification, where appropriate by using technical devices and by consulting, in the relevant databases, information exclusively on stolen, misappropriated, lost and invalidated documents, of the validity of the document authorising the legitimate holder to cross the border [...]

The refusal of entry is governed by Article 13 of the Schengen Borders Code and stipulates that a third-country national who does not fulfil all the entry conditions shall be refused entry to the territories of the Member States, but this shall be without prejudice to the application of special provisions concerning the right of asylum and to international protection or the issue of long-stay visas.[28]

The Return Directive[29] sets out as an object common standards and procedures to be applied in Member States for returning illegally staying third-country nationals, in accordance with fundamental rights as general principles of Community law as well as international law, including refugee protection and human rights obligations.[30] The Return Directive applies to third-country nationals staying illegally on the territory of a Member State, but the Member States may decide not to apply this Directive to third-country nationals who are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State.[31] The special attention should be given to the non-refoulement principle, the best interest of a child, right to a family life and the state of health of the person subjected to return.[32]

Return decisions and, if issued, entry-ban decisions and decisions on removal shall be issued in writing and give reasons in fact and in law as well as information about available legal remedies. The information on reasons in fact may be limited where national law allows for the right to information to be restricted, in particular in order to safeguard national security, defence, public security and for the prevention, investigation, detection and prosecution of criminal offences.[33] However, foreigners

[28] *Ibid.*, Article 13.

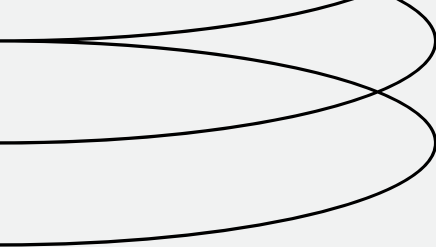
[29] European Union: *Council of the European Union, Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*, 16 December 2008, OJ L. 348/98-348/107; 16.12.2008, 2008/115/EC, available at: <https://bit.ly/2Zo7lcz>, hereinafter: Return Directive.

[30] *Ibid.*, Article 1.

[31] *Ibid.*, Article 2.

[32] *Ibid.*, Article 5.

[33] *Ibid.*, Article 12.



are entitled to lodge an effective remedy to appeal against or seek review of decisions related to return before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence[34] and which could have a possibility to suspend the enforcement, unless a temporary suspension is already applicable under national legislation.[35] A foreigner is entitled to obtain legal advice, representation and, where necessary, linguistic assistance and free of charge.[36]

Asylum Procedure Directive[37] prescribes that Member States shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf and that an applicant can also be made on behalf of his or her dependants.[38] Applicants are allowed to remain in the Member State, for the sole purpose of the procedure, until the determining authority has made a decision.[39]

Member States shall ensure that applications for asylum are neither rejected nor excluded from examination on the sole ground that they have not been made as soon as possible.[40]

II.2. Council of Europe Standards

Every harmful border practice which ends in pushback, as outlined before, is most commonly consisted of the following types of human rights violations:

1. short term deprivation of liberty – right to liberty and security – Article 5 of ECHR
2. potential ill-treatment – prohibition of ill-treatment – Article 3 of ECHR
3. expulsion without risk assessment of refoulement – Article 3 of ECHR
4. collective expulsion – Article 4 of Protocol 4 to ECHR
5. denial of access to effective legal remedy – Article 13 of ECHR

The ECtHR has always acknowledged that a number of European States have to cope with frequent influxes of mixed migration flows and it is undisputable that their sovereign right is to control entry, residence and removal of foreigners.[41]The

[34] *Ibid.*, Article 13 (1).

[35] *Ibid.*, Article 13 (2).

[36] *Ibid.*, Article 13 (3) and (4).

[37] European Union: *Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013, OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU, available at: <https://bit.ly/37vMeim>.

[38] *Ibid.*, Article 6.

[39] *Ibid.*, Article 7.

[40] *Ibid.*, Article 8 (1).

[41] ECtHR, *Chahal v. the United Kingdom*, Application No. 22414/9, Judgment of 15 November 1996, available at: <https://bit.ly/478ecxx>, para. 73.

sovereign right of State Parties is to establish their own immigration policies.[42] However, the problems which States may encounter in managing migratory flows or in the reception of refugees, migrants and asylum-seekers cannot justify recourse to practices which are not compatible with the Article 3 of the ECHR, but also other provisions of the Convention[43]

II.2.1. Foreigners intercepted at borders are persons deprived of their liberty

The European Committee for the Prevention of Torture and Inhumane or Degrading Treatment of Punishment[44] has always outlined that a foreigner can be deprived of his/her liberty following an alleged violation of the legislation related to aliens including due to illegal entry or stay or for the purpose of forcible removal.[45] All foreigners intercepted at State borders (land or sea) for the purpose of forcible removal have to be considered as deprived of their liberty and taking into account objective and subjective criteria[46] of the Strasbourg Court.[47]

Foreigners deprived of their liberty should be served with an individual detention order which should be drawn up at the outset of the deprivation of liberty or as soon as possible, and a single and comprehensive custody record should be kept for him or her containing information on all aspects of his/her custody and all action taken in connection with it.[48]

Foreign national deprived of liberty is also entitled to be informed promptly in a language that is simple and non-technical and that he or she can understand, on the essential legal and factual grounds for the arrest and any charges (including

[42] *N.D. and N.T. v. Spain*, Application Nos. 8675/15 and 8697/15, Judgment of 13 February 2020 [GC], available at: <https://bit.ly/3MkKoUy> para. 168; Report on the Visit to Italy, para. 48 and 51.

[43] ECtHR, *N.D. and N.T. v. Spain*, Application No. 8675/15 8697/15, Judgment of 13 February 2020 [GC], available at: <https://bit.ly/3MkKoUy>, para. 170.

[44] Hereinafter: CPT.

[45] Article 5-1-f, ECtHR and CPT, *Foreign nationals detained under aliens legislation*, Extract from the 7th General Report of the CPT, published in 1997, CPT/Inf(97)10-part, available at: <https://bit.ly/3J5GKe1>, para. 24.

[46] ECtHR, *Guzzardi v. Italy*, Application No. 7367/76, Judgment of 6 November 1980, available at: <https://bit.ly/3tS73Al>, para. 95 and ECtHR, *Z.A. and Others v. Russia*, Application No. 61411/15, 61420/15, 61427/15 and 3028/16, Judgment of 21 November 2019 [GC], available at: <https://bit.ly/3KD7Rza>, para. 138 and *Ilias and Ahmed v. Hungary*, Application No. 47287/15, Judgment of 21 November 2019 [GC], para. 217.

[47] CPT, *The prevention of ill-treatment of foreign nationals deprived of their liberty in the context of forced removals at borders*, Extract from the 32nd General report of the CPT Published on 30 March 2023, CPT/Inf (2023) 7 – part, available at: <https://bit.ly/3qbggEv>, para. 6, hereinafter: GR 32.

[48] CPT, *Immigration detention*, CPT/Inf(2017)3, available at: <https://bit.ly/3Li4Xzd>, p. 2

immigration offences) against him or her.[49] This would allow them, to challenge the lawfulness of deprivation of liberty before the judicial body.[50]

CPT also stipulates that refugees and migrants deprived of their liberty should be served with a document setting out their rights, responsibilities and procedures applicable at them which is drafted in languages most commonly spoken by those concerned and, if necessary, the services of an interpreter should be made available. [51]

And finally, detained foreigners should, from the very outset of their deprivation of liberty[52] effectively enjoy three basic rights which represent the most fundamental safeguards against ill-treatment: (1) to have access to a lawyer, (2) to have access to a medical doctor, and (3) to be able to inform a relative or third party of one's choice about the detention measure.[53]

II.2.2. Absolute prohibition of ill-treatment in the context of border control and material and procedural limb of the non-refoulement principle

The prohibition of torture and inhuman or degrading treatment or punishment is a non-derogable, peremptory norm of international law and it makes no provision for exceptions, and no derogation from them are permissible under Article 15 § 2 of ECHR – even in the event of a public emergency threatening the life of the nation.[54] All forms of ill-treatment are prohibited in absolute terms.[55]

Absolute prohibition of ill-treatment implies that any unlawful resort to physical or psychological force against refugees, asylum seekers and irregular migrants intercepted at the borders cannot be justified, and it creates a clear responsibility of the relevant State authorities to investigate such cases, identify perpetrators and punish them with the sanction commensurate to the gravity of their

[49] Article 5 (2) of the ECHR; *Khlaifia and Others*, Application No. 16483/12, Judgment of 15 December 2016 [GC], available at: <https://bit.ly/3MgGwE4>, para. 115; ECtHR, *Fox, Campbell and Hartley v. the United Kingdom*, Application Nos. 12244/86 12245/86 12383/86, Judgment of 30 August 1990, available at: <https://bit.ly/35V6And>, para. 42; Report on Visit to Italy I, para. 40; [1] CPT, *Immigration detention*, p. 2.

[49] *Khlaifia*, para. 115.

[50] *Čonka v. Belgium*, Application No. 51564/99, Judgment of 5 February 2002, available at: <https://bit.ly/3skjR0b>, para. 50 and ECtHR, *Shamayev and Others v. Georgia and Russia*, Application No. 36378/02, Judgment of 12 April 2005, available at: <https://bit.ly/34CvHKE>, para. 413; CPT, *Immigration detention*, p. 3.

[51] CPT, *Immigration detention*, p. 2.

[52] Report on the visit to Hungary, para. 31.

[53] CPT, *Immigration detention*, p. 2.

[54] ECtHR, *M.K. v. Poland*, Application Nos. 40503/17 42902/17 43643/17, Judgment of 23 July 2022, available at: <https://bit.ly/3EvBH7Z>, para. 166.

[55] *Chalal v. the United Kingdom*, para. 79.

crimes.[56] This prohibition also reflects the absolute nature of the non-refoulement principle which entails the obligation not to send a person to a country where there are substantial grounds for believing that he or she would run a real risk of being subjected to torture or other forms of ill-treatment.[57]

The assessment of the risks of refoulement must be a rigorous one and must encompass personal circumstances of the individual in question and in the course of such an assessment.[58] The risk assessment of treatment contrary to Article 3 must be undertaken proprio motu, ex nunc and with rigorous scrutiny in relation to the existing conditions in the receiving country against the standards of the Article 3 that “were known or ought to have been known by the Contracting State at the time of the expulsion. The State Party must conduct such assessment “in light of the general situation there and of his or her personal circumstances”.[59]

In its substantive chapter of the 32nd General Report, the CPT outlined:

‘38. It is therefore imperative that a human rights-based approach prevails in all activities related to border control and in dealing with mixed-migratory arrivals. Regardless of where they take place – at land or sea borders – pushback operations of foreign nationals, often accompanied by physical ill-treatment and other forms of inhuman or degrading treatment, must end. The absolute nature of the prohibition of torture and other forms of ill-treatment under Article 3 of the Convention requires that individuals may not be sent back to a country where there are substantial grounds for believing that they would run a real risk of being subjected to ill-treatment, without first assessing their claim as to whether this is safe.

39. Consequently, based on its preventive mandate, the CPT calls upon all member states of the Council of Europe to act, individually and collectively, to protect foreign nationals deprived of their liberty under immigration legislation from any form of ill-treatment and from pushbacks at borders, and particularly at the external borders of the EU. Further, there is a need to reinforce the safeguards against refoulement and ill-treatment and promote the operation of independent monitoring mechanisms at these borders.’[60]

[56] CoE, Guide on Article 3 of the European Convention on Human Rights, First edition – 31 August 2022, available at: <https://bit.ly/3O9qqxj>, Chapter IV.

[57] *Ibid.*, para. 83.

[58] *J.K. and Others v. Sweden*, Application No. 59166/12, Judgment of 23 August 2016, paras. 77 - 105 and *F.G. v. Sweden*. Application No.43611/11, Judgment of 23 March 2016, paras. 110 – 127.

[59] *Salah Sheekh v. the Netherlands*, App. No. 1948/04, Judgment of 11 January 2007, para. 136 and *Ilias and Ahmed v. Hungary*, Application No. 47287/15, Judgment of 21 November 2019, para. 127.

[60] GR 32, para. 38 and 39.

In other words, pushback practices are almost always incompatible with safeguards against refoulement, and they undermine at least the procedural limb of the Article 3.

II.2.3. Prohibition of collective expulsions

Pushback is nothing but the most commonly applied form of collective expulsions. In order to determine whether Article 4 of Protocol No. 4 is applicable the Court must seek to establish whether the relevant State authorities subjected the applicants to an “expulsion” within the meaning of that provision.[61] ECtHR interprets the term “expulsion” in the generic meaning in current use as referring to any forcible removal of an alien from a State’s territory, irrespective of the lawfulness of the person’s stay, the length of time he or she has spent in the territory, the location in which he or she was apprehended, his or her status as a migrant or an asylum-seeker and his or her conduct when crossing the border.[62]

Collective expulsion, within the meaning of Article 4 of Protocol No. 4, is to be understood as any measure compelling aliens, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group.[63] Article 4 of Protocol No. 4 is aimed at maintaining the possibility, for each of the aliens concerned, to assert a risk of treatment which is incompatible with the Convention – and in particular with Article 3 – in the event of his or her return and, for the authorities, to avoid exposing anyone who may have an arguable claim to that effect to such a risk. For that reason, Article 4 of Protocol No. 4 requires the State authorities to ensure that each of the aliens concerned has a genuine and effective possibility of submitting arguments against his or her expulsion.[64]

The applicant’s own conduct can in some instances be a relevant factor in assessing the protection to be afforded under Article 4 of Protocol No. 4 if the lack of an individual expulsion decision can be attributed to the applicant’s own conduct.[65] This was recognized in instances in which persons who cross a land border in an unauthorised manner, deliberately take advantage of their large numbers and use force, is such as to create a clearly disruptive situation which is difficult to control and endangers public safety. In this context, however, in assessing a complaint under Article 4 of Protocol No. 4, the Court will, importantly, take account of whether in the

[61] *N.D. and N.T. v. Spain*, para. 185.

[62] *Ibid.*, para. 164.

[63] *Čonka v. Belgium*, para. 59.

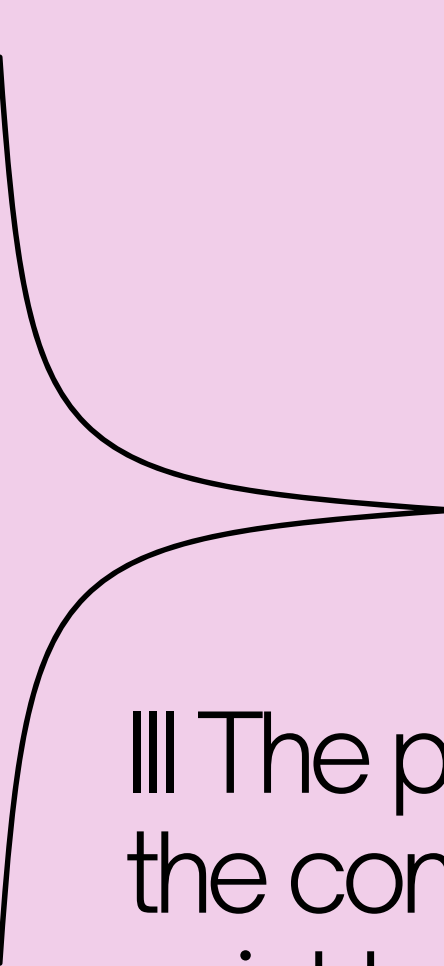
[64] ECtHR, *Hirsi Jamaa and Others*, Application No. 27765/09, Judgment of 23 February 2012 [GC], available at: <https://bit.ly/3rGl2ps>, para. 177.

[65] *N.D. and N.T. v. Spain*.

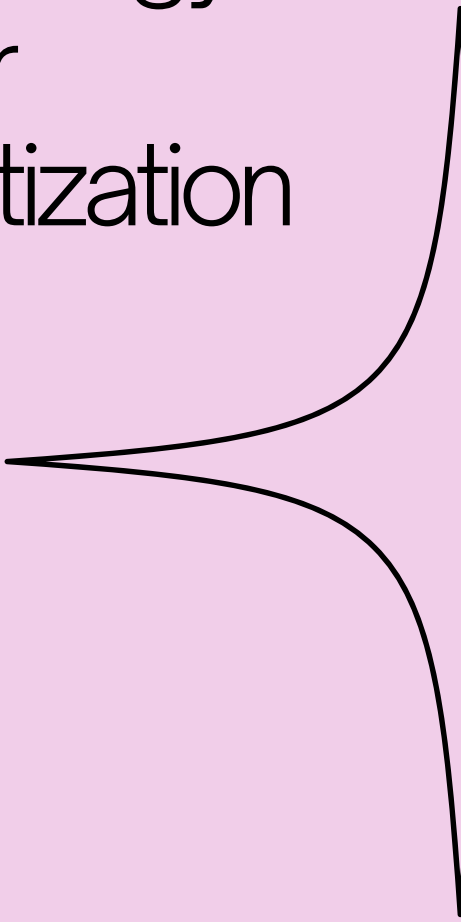
Article 4 of Protocol No. 4, the Court will, importantly, take account of whether in the .

1. informing on rights, responsibilities and applicable procedure in a language foreigners understand and preferably through multi-lingual leaflets
2. explicit information to apply for asylum or other residential procedure in which individual circumstances relevant for the decision on return can be examined
3. provide the right to access lawyer, possibility inform persons of their choice and right to medical examination
4. keep detailed and individualized custody/apprehension records
5. border police or other state officers should display visible identification numbers or tags on their uniforms
6. border control activities should be recorded so they prevent ill-treatment
7. individualized removal orders with the possibility of appeals which have automatic suspensive effect[66]

[66] See more at GR 32.



III The practice of pushbacks in the context of Serbia and neighbouring countries and increased use of technology and other resources for disproportionate securitization of borders



III.1. Applicable legal framework and statistical data on formal returns from and to Serbia

As already outlined on several occasions, the geographical position of Serbia puts this country in a unique situations – being exposed to harmful border practices of neighbouring EU members States, but also frequently resorting to similar or identical patterns of behaviour which undermine the above-described standards.

First of all, it is important to outline that all of the above-mentioned standards are legally binding and directly applicable in Serbia, regardless of their origin. Serbian Constitution and Articles 16 and 18 and 145 (2)[67] provide for the direct application of IHRL compiled in the practice of the Council of Europe, but also United Nation bodies. But also, the EU standards which are not directly applicable can still be applied because these standards are carved in line with the EU Charter on Fundamental Rights which directly refers to the ECHR. Moreover, in the process of the EU integrations of Serbia, the most relevant provisions of CEAS have been transposed to the Asylum and Temporary Protection Act and the Foreigners Act. For that reason, it can be safely

[67] Official Gazette of the Republic of Serbia, nos. 98/2006 and 115/2021, Constitution.

assumed that Serbia has the possibility to resort to formal ways of receiving foreigners from neighbouring States, but also to remove them to other States either through different readmission agreements or through the institute of the refusal of entry decision.[68] The statistical data for 2022 corroborates this standing.

Readmission practice of Serbian border authorities in 2022			
Readmission to Serbia		Readmission from Serbia	
Country	No. of Persons	Country	No. of Persons
Hungary	30	Hungary	0
Romania	243	Romania	5
Croatia	314	Croatia	0
Montenegro	6	Montenegro	12
BiH	61	BiH	0
Bulgaria	24	Bulgaria	174
Total	678	Total	191

Refusal of Entry Decisions issued by Serbian border authorities in 2022	
Country	No. of people
North Macedonia	32
Bulgaria	235
Romania	235
Hungary	312
Croatia	414
Montenegro	130
Total	1,358

Thus, a total of 2,227 foreign nationals was returned to or from Serbia in 2022 at land borders. However, in the same period, the number of people returned from and to Serbia through the practice of pushbacks is significantly higher.

III.2. The pushback practices from and to Serbia in the period 2015 – 2022 and gradual increase of securitization of borders

After EU and Turkey have reached an agreement – EU-Turkey Statement – the practice of harmful border practices has become a systemic issue on borders of all

[68] Article 15, Foreigners Act.

countries forming the so-called WBR, as well as those forming the external borders of the EU. The first public praise of such practice in Serbia occurred in June 2015, when the high state official publicly praised Serbian border authorities for sending '400 migrants' back to North Macedonia.[69]

In July 2016, the Serbian Government adopted a decision to form mixed patrols of the army and police to strengthen the border with North Macedonia and Bulgaria.[70] The mixed patrols were operational until 2018. In the said period, pushbacks first from Hungary, and then from the begging of 2017, from Croatia, have intensified, leading to hundreds of instances of violent returns per day, and which implied sever forms of ill-treatment, denial of access to territory and asylum procedure and other flagrant forms of human rights violations. This practice has remained unchanged to this date.[71] Apart from hundreds of reports and thousands of testimonies,[72] it become clear that the number of arrivals to WBR countries and onward to the EU has been constantly high, except in the COVID-19 restrictive period where numerous countries have introduced lock downs for all people on the move.[73]

In the said period, the support of the EU to Serbia intensified, but also the support to the EU member States which were tasked to decrease the number of arrivals of refugees, asylum seekers and migrants.

The technology which has been deployed to borders in Hungary and Croatia, and then gradually in Romania implied: thermal imaging cameras and footage, drones, sensor movements, different forms of video surveillance and combination of all of the enlisted. In other words, the technology has been utilized to detect irregular movements, and with an aim to carry out harmful border practices. In 2022, InfoMigrants reported that 'the European Union and its border agency Frontex are using increasing amounts of technology to monitor migration at external and internal borders across Europe [...] with an aim to 'evade legal responsibilities.'[74] The Guardian reported that 'drones, thermal-vision cameras and devices that can detect a heartbeat are among the new technological tools being increasingly used by European police to stop migrants from crossing borders, or to push them back when they do.'[75] Described as the militarization of of Europe's borders, the Guardian outlined that the

[69] Blic, Vulin: *Sinoć vraćeno 400 migranata u Makedoniju*, 23 June 2015, available at: <https://bit.ly/3OvHEqe>.

[70] N1, 'The police and army together against illegal migrations', 16 July 2016, available in Serbian at: <http://bit.ly/2kelszH>.

[71] ECRE, Country Report: Serbia, 2022 Update, available at: <https://bit.ly/3Wmq0aD>, pp. 48-71.

[72] *Ibid*, but see also the webcite of the Border Violence Monitoring Network: <https://borderviolence.eu/>.

[73] IDEAS, *Hod po žici*, available at: <https://bit.ly/43Fn37f>, see also Tables bellow.

[74] See more at: <https://www.infomigrants.net/en/post/38478/digital-borders-eu-increases-use-of-technology-to-monitor-migration>.

[75] See more at: <https://www.theguardian.com/global-development/2021/mar/26/eu-borders-migrants-hitech-surveillance-asylum-seekers>.

investment of the EU reached €34.9bn in funding for border and migration management for the 2021-27.[76]



Source: Info Migrants

The most striking example of harmful border practices was the tragic death of little girl from Afghanistan, Medina Hosseini[77] which displayed unlawful management and police conduct while using thermal imaging cameras and footage on the external borders of Croatia.[78] Thermal imaging cameras used in the night when the Afghan girl died were financed through the Schengen Facility Instrument that in overall covered several projects aiming at halting irregular migration. In 2017 and 2018, through mentioned Instrument, police department Vukovar-Srijem installed on seven different locations thermal imaging cameras and day-night cameras. These cameras can be operated remotely by a police officer or can be set on auto-tracking mode. In good weather conditions, thermal imaging cameras can detect a person at 16km of distance and a vehicle at 21km. In good weather conditions, day-night cameras can detect a person at 15km of distance.[79] This tragic case resulted in Croatia being held responsible before the ECtHR.[80]

The same thermal imaging cameras and footage are now deployed on all EU external borders but are also distributed to Serbia. The drones have also become

[76] *Ibid.*

[77] See more at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1692-Evaluation-of-the-Schengen-Facility-Instrument-for-Croatia/F11415_en.

[78] See more at: <https://www.theguardian.com/world/2017/dec/08/they-treated-her-like-a-dog-tragedy-of-the-six-year-old-killed-at-croatian-border>.

[79] See more at: <https://eufondovi.mup.hr/vijesti/instalirani-sustavi-tehnickog-nadzora-drzavne-granice-na-podrucju-pu-vukovarsko-srijemske-i-pu-splitsko-dalmatinske/177>

[80] ECtHR, *M.H. and Others v. Croatia*, Application Nos. 15670/18 43115/18, Judgment of 18 November 2021, available at: <https://hudoc.echr.coe.int/fre?i=001-213213>.

integral part of border control equipment of Hungary, Romania and other countries in the region despite their membership in the EU.

In 2020, the Croatian Ministry of Interior launched tenders for procurement of additional equipment for “protection and control” of the external border of the EU. One tender was explicitly focused on the procurement of drones that are now being used on the border with Serbia and Bosnia and Herzegovina.[81] With this tender, the Ministry of Interior launched a project that will finance this specific gear; 8 new stationed locations with cameras for the control of the border, 8 mobile thermal image cameras, 84 optoelectronic devices (binoculars with night vision), 505 devices (“tetra veza”). In addition, Mol bought 70 specialised vehicles for inaccessible terrain. All of this equipment is not being used on the border with Serbia and Bosnia and Herzegovina.



Together with thermal image cameras, and day-night cameras, in 2017, the Ministry of Interior of Croatia bought using the funds of the same Instrument, 22 mobile devices for night observation (image below).[82]

[81] See more at: <https://eufondovi.mup.hr/primjeri-projekata-folder/uredjaji-za-nocno-promatranje/137>

[82] See more at: <https://mup.gov.hr/vijesti/projekt-nabava-bespilotnih-letjelica/286593>.



III.3. Serbia, EU funds, modern technologies and cooperation with Frontex

In 2016, the first publicly known procurement which is related to modern technology for border control was conducted in Serbia with the EU funds.[83] It was referred to cameras, drones and vehicles. In 2018, Sam Fabrizio, ambassador and head of the European Union Delegation in Serbia, that official Brussels financially supports Serbia and the Ministry of Internal Affairs in order, among other things, to improve border management capacities. The European Union's support for border management, in addition to hosting police officers from European Union countries,

[83] See more at: <https://serbia.iom.int/sr/podrska-eu-srbiji-za-unapredenje-upravljanja-granicama-u-kontekstu-migrantske-krize>.

also includes the procurement of specialized equipment for border surveillance, such as sophisticated drones, endoscopic and thermal imaging cameras, all-terrain vehicles, communication devices, travel document readers, specialized binoculars and more.[84] Since 2016, the practice of denial of access to territory and asylum procedure has become regular at entry points to Serbia from Bulgaria and North Macedonia.

III.3.1. Serbia, EU and Frontex

European Border and Coast Guard Agency (Frontex) is responsible for managing Union's external borders, as well as for contributing to the application of Union law at external borders[85]. Frontex supports EU Member States and Schengen-associated countries by sharing intelligence and expertise with all Member States and with neighbouring non-EU countries affected by migratory trends and cross-border crime. Hundreds of officers, standing together with national authorities are taking part in operations such as border surveillance, fighting cross-border crime, and assisting in return operations, thus safeguarding Schengen Area and ensuring safe and well-functioning external borders[86].

In the Republic of Serbia, Frontex is engaged based on the bilateral agreement signed in November 2019 by on behalf of EU Dimitris Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship and by Maria Ohisalo, Minister of the Interior of Finland and President of the Council and, and on behalf of the Republic of Serbia by Nebojša Stefanović, Deputy Prime Minister and Minister of the Interior. This agreement allows Frontex to assist Serbia in border management, to carry out joint operations and deploy teams in the regions of Serbia that border the EU with the aim of tackling irregular migration and cross-border crime which can involve the provision of increased technical and operational assistance at the border[87].

Members of the team have the authority to perform the tasks and exercise the executive powers required for border control and return operations and are obliged to respect the national legislation of Serbia.[88] Members of the team may only perform tasks and exercise powers on the territory of Serbia under instructions from and in the presence of border guards or other police officers. The Agency, through its coordinating officer, may communicate its views to the competent authority of the on

[84] See more at: <https://www.telegraf.rs/vesti/politika/2974250-100-policijskih-sluzbenika-iz-evrope-stize-na-jednu-granicu-srbije-eu-salje-opremu-za-nadzor-dronove-i-terenska-vozila>.

[85] <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1573722151667&uri=CELEX:32019R1896>

[86] Frontex, *Who we are*, available at: <https://shorturl.at/acNVZ>

[87] European Commission, 2019, *Border management: EU signs agreement with Serbia on European Border and Coast Guard cooperation*, available at: <https://shorturl.at/nPWY1>

[88] Status Agreement between the European Union and the Republic of Serbia on actions carried out by the European Border and Coast Guard Agency in the Republic of Serbia, available at: <https://shorturl.at/iBDLW>, Article 5]

the instructions given to the team. In that case, the competent authority of Serbia shall take those views into consideration and follow them to the extent possible[89].

Members of the team shall wear their own uniform while performing their tasks and exercising their powers. While performing their tasks and exercising their powers, members of the team may carry service weapons, ammunition and equipment which they shall be authorised to use[90].

The competent authority of Serbia may, upon request, communicate relevant information contained in its national databases to members of the team if necessary for fulfilling operational aims specified in the operational plan and for implementing actions. The members of the team may be communicated only information concerning relevant facts which is necessary for performing their tasks and exercising their powers. The Agency may communicate to the competent authorities of the Republic of Serbia relevant information which is necessary for fulfilling operational aims specified in the operational plan and for implementing actions.

Members of the team shall, in the performance of their tasks and in the exercise of their powers, fully respect fundamental rights and freedoms, including as regards access to asylum procedures, human dignity and the prohibition of torture, inhuman or degrading treatment, right to liberty, the principle of non-refoulement, prohibition of collective expulsions, the rights of the child and the right to respect for private and family life. While performing their tasks and exercising their powers, they shall not discriminate against persons on any grounds including sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation. Any measures interfering with fundamental rights and freedoms taken in the performance of their tasks and in the exercise of their powers shall be proportionate to the objectives pursued by such measures and respect the essence of these fundamental rights and freedoms.[91]

During 2022 there has been a significant increase in irregular entries at the external borders of the European Union with preliminary calculations showing a 68% increase compared to the same period previous year. The Western Balkan route remains the most active, accounting for 45% of all irregular entries into the EU this year.[92] The region has seen the highest level of detections since the peak of the migration crisis in 2015 and to assist countries dealing with high migratory pressure and border challenges, Frontex deployed standing corps officers and various equipment in joint operations.

[89] *Ibid.*

[90] *Ibid.*

[91] *Ibid.* Article 9

[92] Frontex, *EU external borders in November: Western Balkans route most active, 2022*, available at: <https://shorturl.at/pwxyK>

This sustained migratory pressure in the Western Balkans was attributed to repeated attempts by migrants already present in the region to cross the border, as well as some migrants abusing visa-free access to approach the EU external borders. Serbia has recently implemented restrictions on its visa regime, which is expected to reduce the number of illegal crossings.[93]

The EU has made significant investments in border protection in Serbia and the Western Balkans region. To further enhance border management the EU has adopted a recommendation to negotiate upgraded status agreements between the EU and Albania, Serbia, Montenegro, and Bosnia and Herzegovina for the new Frontex engagement[94].

These new agreements and efforts aim to strengthen cooperation, improve border management, combat illegal migration, and cross-border crime. They shall also address issues such as data protection, human rights, and the accountability of Frontex activities in the region. Furthermore, under the new agreements, Frontex will have the legal basis to deploy teams and equipment in the border regions of these countries (not only at the borders of EU) and conduct joint operations and training activities with local border authorities.[95]

In support of this effort, an assistance package has been adopted, based on a detailed assessment of needs with the Western Balkan authorities. The package includes specialized equipment like mobile surveillance systems, unmanned aerial vehicles, and biometric devices, as well as training and support to establish National Coordination Centres and operationalize migration facilities, including reception and detention facilities. The total support provided under IPA III in this area amounts to €171.7 million[96].

In October 2022, the EU Council authorized the opening of negotiations with the four Western Balkan countries, including Serbia, to broaden agreements on cooperation with Frontex. Still, these agreements are not concluded.

These investments and enhanced cooperation with Frontex reflect the EU's commitment to supporting its Western Balkan partners in managing migration,

[93] *Ibid.*

[94] European Commission, *EU increases support for border and migration management in the Western Balkans*, 25 October 2022, available at: <https://shorturl.at/wzIQ6>

[95] European Western Balkans, *Frontex to safeguard the borders in the Western Balkans*, 2022, available at: <https://shorturl.at/awHW1>

[96] European Commission, *EU increases support for border and migration management in the Western Balkans*, available at: <https://shorturl.at/wzIQ6>

strengthening border protection, fighting smuggling networks, and ensuring security. In 2018, the EU provided 1.5 million euros to the Serbian government for managing borders and preventing illegal migration. From 2007 to 2018, Serbia received 1.5 billion euros through the EU's pre-accession assistance program, which included funding for border management.[97] The EU aims to provide increased political and financial assistance, with funding set to increase by 60% between 2021 and 2024, reaching at least €350 million for the Western Balkan partners.[98]

Besides bilateral agreements, Frontex engagement in Western Balkans can be based on the EU's integrated borders management policy (EIBM), which includes cooperation of EU with its neighbouring countries to ensure the effective management and control of the Unions external borders.

EIBM is based on a model comprising measures concerning not only controls and operations at the external borders but also measures beyond the external borders, such as information exchange and training activities in neighbouring countries and in countries of origin and transit of irregular migration and within the Schengen area[99]. It encompasses various components to ensure the security and integrity of the EU's external borders: border control, search and rescue, cooperation among relevant EU institutions, cooperation with third countries, technical and operational measures within the Schengen area, return of third-country nationals, state-of-the-art technology and information systems, quality control mechanism and solidarity mechanisms.[100]

As a key factor in supporting member states' efforts to manage and control the Unions external borders Frontex in the EIBM has a significant responsibility. Among many different tasks, Frontex cooperates with third countries, particularly neighbouring countries, to promote effective border management and facilitate information sharing, aiming to prevent irregular migration and cross-border crime.[101]

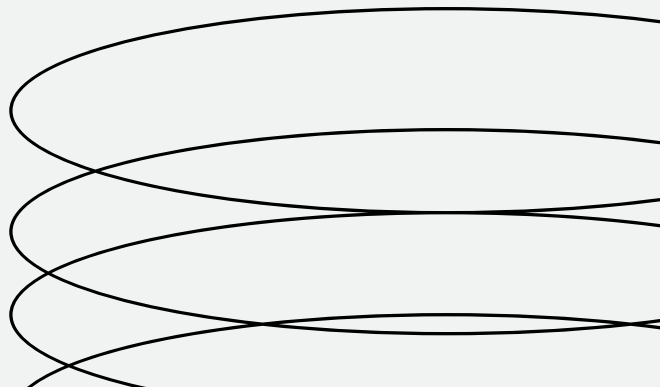
[97] European Commission, *Western Balkans: EU delivers further assistance to support border management and fight against organized crime*, available at <https://shorturl.at/mvGMO>

[98] European Commission, *EU increases support for border and migration management in the Western Balkans*, available at: <https://shorturl.at/wzIO6>

[99] Regulation No. 2019/1896 of the European Parliament and of the Council of EU, available at: <https://shorturl.at/kzBF2>

[100] *Ibid.*

[101] *Ibid.*



III.4. Harmful border practices on Serbian entry and exit points

Alongside with increased securitization of borders and inter-state cooperation legitimately aimed at combating irregular migration and organized crime,[102] which was accompanied with the extensive use of modern technologies, the harmful border practices prevail at Serbian borders. Regardless of the number of arrivals (60,338 foreigners recorded in 2021 and almost 120,000 in 2023), the reports on the so-called 'prevention of illegal entries' have intensified, containing information which contradicts IHRL standards.

In the period from 2016 until 2022, at least 227,183 persons was prevented from illegally entering Serbia. This number does not correspond to the official numbers of refusal of entry decisions or readmission operations. For instance, on the land border between Serbia and neighbouring States, a total of 2,227 foreign nationals was returned to or from Serbia in 2022, while in the same period, and only on the border with North Macedonia, Serbian border authorities prevented a bit less than 46,000 entries. In the same period, Hungary prevented 158,565 irregular entries. This kind of discrepancy gives serious reasons for concern and clearly shows how pushbacks have become systemic.

During the course of this Project, the field team of IDEAS interviewed a total of 69 nationals from Syria and Morocco, accommodated in Reception Centres in Pirot and Bosilegrad.[103] All of them shared their experience in crossing from Turkey to Bulgaria, and from Bulgaria to Serbia. The vast majority of them reported multiple instances of violent pushbacks from Bulgaria to Turkey, outlining that they were spotted either by cameras, sensor movements located in the forest or drones which they could hear during the night when they were attempting to cross the border.

When it comes to their crossings from Bulgaria to Serbia, only a handful of foreign nationals claimed to be spotted by border authorities in the green border area and returned to Bulgaria. One of them claimed physical violence, while the rest psychological embodied through threats, yelling and insults. They also outlined that they did not spot drones but believe that they were spotted with 'special cameras'. The remaining stated that they were taken to the police station where they were photographed and fingerprinted.

[102] See for example cooperation between Hungary, Serbia and Austria available at: <https://www.euronews.com/2022/10/04/hungary-austria-and-serbia-leaders-outline-plan-to-curb-migration>.

[103] The visits were conducted on 20 and 21 of July 2023

III.4. Harmful border practices on Serbian entry and exit points

Table showing the number of arrivals to Serbia in the period 2021-2022[104]

Month	Arrivals 2021	Arrivals 2022
January	3,180	2,644
February	2,273	3,236
March	3,832	1,238
April	4,344	6,132
May	3,182	8,019
June	4,111	10,039
July	5,762	13,425
August	7,101	17,997
September	8,978	19,345
October	6,570	14,519
November	6,027	11,916
December	4,978	11,160
Total	60,338	119,670

Table showing the number of prevented 'illegal entries' to Serbia in the period 2016-2022[105]

Year	2016	2017	2018	2019	2020	2021	2022	Total
No. of persons denied access to territory	(at least) 18,000 ¹⁰⁶	(at least) 21,000 ¹⁰⁷	(at least) 23,000 ¹⁰⁸	20,221 ¹⁰⁹	38,226 ¹¹⁰	14,806	45,965 (until 15 December 2022 from North Macedonia)	(at least) 227,183

Table showing the number of prevented entries to Hungary in the period 2016-2022[111]

Year	No. of persons pushed back
2016	8,466
2017	9,259
2018	4,151
2019	11,101

[104] Source: UNHCR.

[105] Table was taken from the AIDA Country Report on Serbia, Update 2022.

[106] Danas, 'Migrants unhappy with conditions of life', 27 December 2016, available in Serbian at: <http://bit.ly/2koDcN7>.

[107] Alo, 'Da nije vojske i policije - Vulin: Sad bi bilo u Srbiji 20.000 migranata, zamislite to!', 22 July 2017, available in Serbian at: <http://bit.ly/2DGDgRx>.

[108] Serbian Army, 'Престанак ангажовања Заједничких снага Војске Србије и МУП', 2 April 2018, available in Serbian at: <https://bit.ly/2EoIHol>.

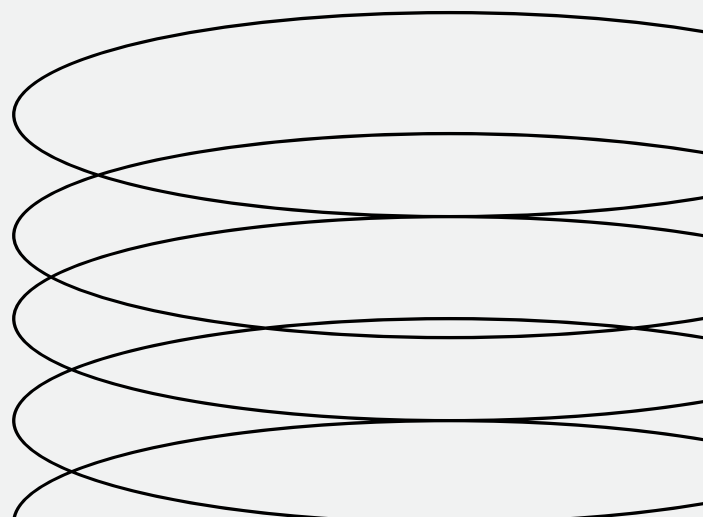
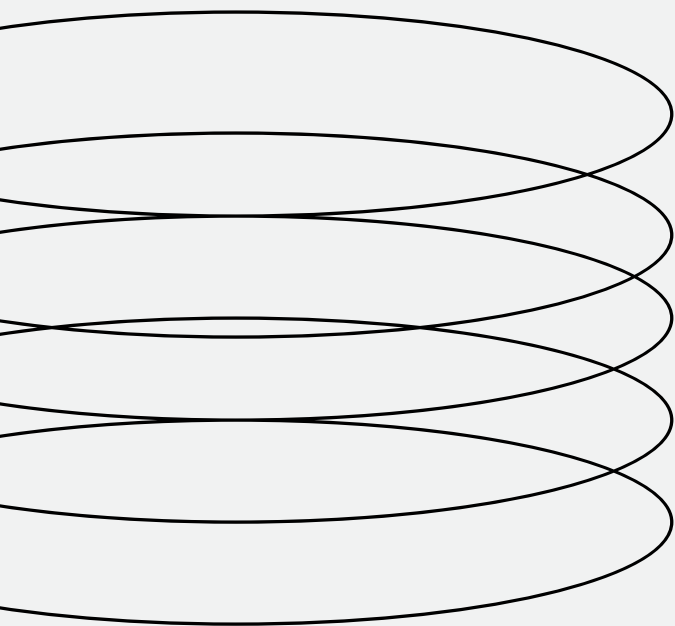
[109] BETA, 'MUP: Na dnevnom nivou spreči se ilegalni ulazak 2'0 do 50 ilegalnih migranata', 26 November 2019, available (in Serbian) at: <http://bit.ly/2TdLuYL>.

[110] Danas, 'Vučić: There are currently 3,977 migrants in Serbia, last year we prevented more than 38,000 illegal crossings', 17 June 2021, available (in Serbian) at: <https://bit.ly/3koFNV0> and Ministry of Interior, Извештај о спровођењу Стратегије супротстављања ирегуларним миграцијама за период 2018-2020. година, available at: <https://bit.ly/3Dtss4r>, 10.

[111] Source: Hungarian Ministry of Interior and Table was taken from the AIDA Country Report on Serbia, Update 2022.

2020	25,603
2021	71,470
2022	158,565
Total	288,615

To conclude, it is undisputable that from 2016 to the conclusion of this Publication, utilization of modern technologies has contributed to the sharp increase of harmful border practices, which predominantly revolves around the practice of pushbacks. It cannot be disputed that the use of modern technology has most likely provided border authorities and Frontex with the possibility to combat organized and trans-national crime. Still, the above-outlined figures clearly depict that the disbalance between the protection of human rights on one side and security of borders of the other side has reached a critical peak. In other words, two equally important and legitimate interests (security of borders and human rights) have been unjustifiably established as opposed interest, even though they are both equally important. To put it in more simple words, border security policies must be carved in line with States' responsibilities to respect, protect and fulfil human rights of refugees, asylum seekers and migrants. Regardless of the future aspirations, EU accession process or CEAS reform which currently ongoing, IHRL standards outlined briefly in this publication will remain valid. The question that remains open is if the modern technology which will continue to develop, will be solely utilized for illegal and harmful practices aimed towards refugees, asylum seekers and migrants, or it will be used in a manner which remedies the hardships that people on the move face on their way to safety?





IV Conclusion and recommendations



1. States have sovereign right to control entry, stay and expulsion from its territory, but practising of this right must be in line with IHRL standards revolving around the right to liberty and security, prohibition of ill-treatment including the non-refoulement principle and prohibition of collective expulsions.
2. All refugees, asylum seekers and migrants must be identified, registered, subjected to health-care and other urgent screening and detailed vulnerability assessment
3. All intercepted refugees, asylum seekers and migrants intercepted during the irregular border crossings should be considered as persons deprived of their liberty and should be afforded with all layers of the right to liberty and security and especially right to attain lawyer and inform person of their choice on their situation
4. Deprivation of liberty of refugees, asylum seekers and migrants will be recorded in detailed and individualized custody records.
5. They will be informed on their rights, responsibilities and applicable procedures, with the special emphasize on the right to apply for asylum or other suitable residential procedure.
6. Refugees, asylum seekers and migrants should not be removed from one country to another outside formal legal procedures (e.g. readmission or refusal of entry) before rigorous assessment of the risks of refoulement and detailed examination of individual circumstances of each and every foreigner is examined with individual decision against which they can lodge a remedy with automatic suspensive effect.
7. Border authorities will utilize technology with an aim to combat irregular migration, control the State borders, combat organized and trans-national crime, but also save lives, identify persons in need of protection and provide assistance in line with IHRL standards.
8. Border authorities will not use modern technology to undermine human rights of refugees, asylum seekers and migrants.
9. Members of the border force who violate human rights of refugees, asylum seekers and migrants must be discovered, criminally and disciplinary prosecuted and sanctioned proportionately to the gravity of their crimes.
10. Modern technology used in the context of border control will not be a mean for facilitating and hiding human rights violations at borders, but a mean to discover and punish those who are responsible for such misdeeds.
11. National human rights institutions such as the Ombudsman or NPM, inspection and internal oversight bodies within the MoI and other relevant State entities and relevant public prosecutors will intensify their efforts to discover, persecute and punish those responsible for human rights violations of refugees, asylum seekers and migrants in the context of border control. The modern technology and evidence obtained through its use will be put at the disposal of investigating bodies with aim to facilitate fair, thorough, timely and effective investigation into arguable allegations on harmful border practices
12. border control activities should be recorded so they prevent ill-treatment
13. border police or other state officers should display visible identification numbers or tags on their uniforms